



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

JUN 27 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Don K. Yamaguchi,
individually, and
Kaiyo U.S.A.
8606 Red Pheasant Court
Houston, Texas 77064

Dear Mr. Yamaguchi:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Don K. Yamaguchi, individually, and Kaiyo U.S.A. (hereinafter collectively referred to as Yamaguchi), has violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 2000)) (the Act).²

¹ The alleged violation occurred in 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter "the former Regulations")). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768X-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 34, 1996. The former Regulations and the Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 *Fed. Reg.* 48347, August 8, 2000), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 2000)) until November 13, 2000 when the Act was reauthorized. See Pub. L. No. 106-508.



Facts constituting violation:

On or about September 27, 1996, in connection with an export of satellite modems from the United States, Yamaguchi caused the exporter to make a false and misleading statement of material fact on the air waybill, an export control document under Section 770A.2 of the former Regulations. Yamaguchi advised the exporter, and the exporter then represented on the air waybill, that the goods being shipped were being exported for ultimate destination in Japan, when, in fact, Yamaguchi knew that Japan was not the ultimate destination for the shipment. BXX alleges that, by causing the doing of an act prohibited by the Act or any regulation, order, or license issued thereunder, Yamaguchi committed one violation of 787A.2 of the former Regulations.

Accordingly, Yamaguchi is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

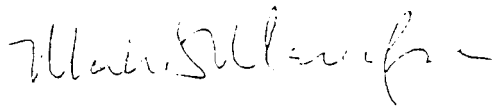
If Yamaguchi fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 756.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Yamaguchi is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Yamaguchi's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations.

In addition, a copy of Yamaguchi's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark D. Menefee", followed by a horizontal line.

Mark D. Menefee
Director
Office of Export Enforcement

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

_____)	
In the Matter of:)	
)	
DON K. YAMAGUCHI,)	
INDIVIDUALLY, AND)	Docket No. 01-BXA-12
KAIYO U.S.A.)	
8606 Red Pheasant Court)	
Houston, Texas 77064,)	
)	
_____ Respondent)	.

SETTLEMENT AGREEMENT

This Agreement is made by and between Don K. Yamaguchi, individually, and Kaiyo U.S.A. (hereinafter collectively referred to as “Yamaguchi”) and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (the Regulations),’ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1994 & Supp. 2001)) (Act).’

¹ The alleged violation occurred in 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 Fed. Reg. 12714, March 25, 1996) (hereinafter “the former Regulations”). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701 - 1706 (1994 & Supp. 2001)) (IEEPA). On November 13,

WHEREAS, on June 27, 2001, Bureau of Export Administration (BXA), initiated an administrative proceeding against Yamaguchi pursuant to the Act and the Regulations by issuing a Charging Letter alleging that, on or about September 27, 1996, in connection with an export of satellite modems from the United States, Yamaguchi caused the exporter to make a false and misleading statement of material fact on the air waybill, an export control document under Section 770A.3 of the former Regulations. Yamaguchi advised the exporter, and the exporter then represented on the air waybill, that the goods being exported were ultimately for Japan, when, in fact, Yamaguchi knew that Japan was not the ultimate destination of the shipment, in violation of 787A.3 of the former Regulations;

WHEREAS, Yamaguchi received notice of issuance of the Charging Letter on July 3, 2001;

WHEREAS, Yamaguchi has reviewed the Charging Letter and is aware of the allegations made against him and the administrative sanctions that could be imposed against him if the allegations are found to be true; Yamaguchi fully understands the terms of this Settlement Agreement and the Order of the Assistant Secretary of Commerce for Export Enforcement implementing this Agreement ("Order"); Yamaguchi enters into this Settlement Agreement voluntarily and with full knowledge of his rights, and Yamaguchi states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

WHEREAS, Yamaguchi neither admits nor denies the allegations contained in the Charging Letter;

WHEREAS, Yamaguchi wishes to settle and dispose of all matters alleged in the Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Yamaguchi agrees to be bound by the Order when entered;

NOW THEREFORE, Yamaguchi and BXA agree as follows:

1. BXA has jurisdiction over Yamaguchi, under the Act and the Regulations, in connection with the matters alleged in the Charging Letter.

2. BXA and Yamaguchi agree that the following sanctions shall be imposed against Yamaguchi in complete settlement of all alleged violations of the Act and the Regulations as set forth in the Charging Letter:

- (a) Yamaguchi shall be assessed a civil penalty of \$10,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- (b) As authorized by Section 1 l(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Yamaguchi. Failure to make timely payment of the civil penalty shall result in the denial of all of Yamaguchi's export privileges for a period of one year from the date of entry of the Order imposing the civil penalty, as well as such other penalties and interest as may be applicable.

3. Yamaguchi agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Settlement Agreement or the Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the Charging Letter; (b) to request a refund of any civil penalty paid pursuant to this Settlement Agreement and the Order, when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the Order, when entered.

4. BXA agrees that, upon entry of an Order, it will not initiate any administrative proceeding against Yamaguchi in connection with any violation of the Act or the Regulations arising out the transactions identified in the Charging Letter.

5. Yamaguchi understands that BXX will make the Charging Letter, this Settlement Agreement, and the Order, when entered, available to the public.

6. BXA and Yamaguchi agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, BXA and Yamaguchi agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.


7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement serve

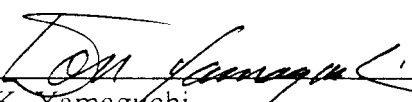
to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary of Commerce for Export Enforcement approves it by entering an Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

DON K. YAMAGUCHI,
INDIVIDUALLY, AND FOR KAIYO U.S.A.

BY: 
~~XXXXXXXXXXXX~~ Jon A. Dyck
~~Karen K. Bhalla~~
 Chief Counsel
~~Enforcement and Litigation Division~~
 Office of Chief Counsel
 for Export Administration
 Date: 3/31/02

BY: 
 Don K. Yamaguchi

Date: 1-31-02

In the Matter of:

Respondent

Docket No. 01-BXA-12

The Bureau of Export Administration, United States Department of Commerce (BXA), having initiated an administrative proceeding against Don K. Yamaguchi, individually, and Kaiyo U.S.A. (hereinafter collectively referred to as “Yamaguchi”) pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. A. app. §§ 2401-2420 (1994 & Supp. 2001)) (Act),’ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (Regulations),² based on allegations that, on or about September 27,

² The alleged violation occurred in 1996. The Regulations governing the violation at issue are found in the 1996 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1996), as amended (61 *Fed. Reg.* 12714, March 25, 1996) (hereinafter “the former Regulations”). The March 25, 1996 *Federal Register* publication redesignated, but did not republish, the then-existing Regulations as 15 C.F.R. Parts 768A-799A. As an interim measure that was part of the transition to newly restructured and reorganized Regulations, the March 25, 1996 *Federal Register* publication also restructured and reorganized the Regulations, designating

1996, in connection with an export of satellite modems from the United States, Yamaguchi caused the exporter to make a false and misleading statement of material fact on the air waybill, an export control document under Section 770A.2 of the former Regulations. Yamaguchi advised the exporter, and the exporter then represented on the air waybill, that the goods being exported were ultimately for Japan, when, in fact, Yamaguchi knew that Japan was not the ultimate destination of the shipment, in violation of 787A.2 of the former Regulations;

BXA and Yamaguchi having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, a civil penalty of \$10,000 is assessed against Yamaguchi, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. 3701-3720E (1983 & Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Yamaguchi will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that, as authorized by Section 1 l(d) of the Act, the timely payment of the

them as an interim rule at 15 C.F.R. Parts 730-774, effective April 24, 1996. The former Regulations define the various violations that BXA alleges occurred. The Regulations establish the procedures that apply to this matter.

civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Yamaguchi. Accordingly, if Yamaguchi should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Yamaguchi's export privileges for a period of one year from the date of this Order.

FOURTH, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022, notifying that office that this case is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

FIFTH, that the Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Michael J. Garcia
Assistant Secretary of Commerce
for Export Enforcement

Entered this 15 day of April, 2002.